

# **EXHIBIT 61**

## **REDACTED**

Page 1

1

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF TEXAS

4 SHERMAN DIVISION

5

- - -

6 THE STATE OF TEXAS, et al.,

7 Plaintiffs,

8 v.

Civil Action No.

9 GOOGLE LLC,

4 : 2 0 - c v - 0 0 9 5 7 - S D J

10

Defendant.

11

- - -

12

April 19, 2024

13

- HIGHLY CONFIDENTIAL -

14

Remote videotaped deposition

15

of [REDACTED], conducted from the

16

location of the witness at Freshfields

17

Bruckhaus Deringer LLP, 170 Greenwich

18

Street, New York, New York, commencing at

19

9:00 a.m. EDT, on the above date, before

20

Marie Foley, a Registered Merit Reporter,

21

Certified Realtime Reporter and Notary

22

Public.

23

24

25

Job No. MDLG6663184

Page 2

1

2 ALL APPEARANCES VIA REMOTE ZOOM TECHNOLOGY:

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PETER HILLEGAS, ESQUIRE

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24

Texas, Idaho, South Dakota and

25

North Dakota

Page 3

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2  
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14 ALSO PRESENT VIA ZOOM:  
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18 Cuong Pham, Texas AG Office  
19 Ross Svenson, Freshfields  
20  
21 EXHIBIT TECHNICIAN:  
22 Jim Lopez  
23  
24 VIDEOGRAPHER:  
25 Danny Ortega

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9:13 a.m. EDT

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8

THE VIDEOGRAPHER: We are now on record. My name is Danny Ortega, and I am the legal videographer for Golkow Litigation Services.

9

10

Today's date is April 19, 2024, and the time is 9:13 a.m.

11

12

13

This video deposition is being held in the matter of the State of Texas versus Google, LLC.

14

15

Our deponent today is [REDACTED]

[REDACTED].

16

17

Counsel, please identify yourselves for the record.

18

19

20

21

22

MR. McBRIDE: John McBride on behalf of the State of Texas. With me also on the call is Peter Hillegas, also on behalf of State of Texas, from Norton Rose Fulbright.

23

24

25

MR. MAHR: Eric Mahr on behalf of Google and the witness. And with me is my colleague Lijun Zhang.

Page 10

1

2                   THE VIDEOGRAPHER: The court  
3                   reporter today is Marie Foley and will  
4                   now swear in the witness.

5

6                   THE STENOGRAPHER: If I could  
7                   ask you to raise your right hand,  
8                   please, sir.

9

10                  Do you swear or affirm the  
11                  testimony you give will be the truth,  
12                  the whole truth, and nothing but the  
13                  truth today?

14

15                  THE WITNESS: I do.

16

17                  THE STENOGRAPHER: Thank you.

18

19                  - - -

20

21                  [REDACTED], the Witness herein,  
22                  having been first duly sworn by a  
23                  Notary Public in and of the State of  
24                  New York, was examined and testified  
25                  as follows:

26

27                  EXAMINATION BY

28

29                  MR. McBRIDE:

30

31                  Q.        Good morning, [REDACTED].

32

33                  A.        Good morning.

34

35                  Q.        You've been deposed before,  
36                  correct?

1

2 understand that perhaps this ad is behind  
3 schedule, at risk of not meeting the  
4 commitment to serve a million ads in the  
5 month of April, and then there would be  
6 actions that they could take to make it  
7 more likely that that ad could serve.

14 Q. Does a publisher have access to  
15 all the same data that Google has access  
16 to regarding any particular auction?

17 A. Not necessarily.

18 Q. Can you give me some examples of  
19 information that Google would have that a  
20 publisher would not?

21           A.        Mostly these are related to user  
22        privacy where by and large we do provide  
23        the information.   What we might do is  
24        remove identifying information for a  
25        specific user.

20 Q. I think we're going to get into  
21 this in -- in a moment, but is it the case  
22 that the publisher sees every bid that was  
23 submitted for a particular auction?

24 A. This has varied over time. What  
25 you describe is currently the case.

Page 35

1

2

Q. When was it not the case?

3

4

5

6

A. Prior to 2019. And here I'm

speaking in my personal capacity. But --

but I have a reasonably accurate knowledge

of this.

7

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18

Prior to 2019, before we

migrated to the unified first-price

auction, there was a [REDACTED]

[REDACTED]

[REDACTED], and so some

buyers opted out of having their bids

included in the data that would go to

publishers. We made [REDACTED]

[REDACTED] as part of a migration

to the unified first-price auction, and

then in the process of that, we removed

that offer.

19

20

Q. What was the process for buyers to opt out of inclusion in that file?

21

22

A. I am sorry, I'm not aware of the exact details for how they could opt out.

23

24

Q. Do you know if many buyers chose to opt out?

25

MR. MAHR: I'll object on scope.

1

2                   But you can answer if you're  
3                   able in your personal capacity.

4                   A.        I know at least a couple of  
5                   buyers did, but I do not know how many.

6                   Q.        Who -- why did Google make a

7                   change to the, I'm sorry, was it the [REDACTED]  
8                   [REDACTED] is that what you called it?

9                   A. [REDACTED]

10                  Q. [REDACTED]

11                  Why did Google make a change to  
12                  that [REDACTED] for unified  
13                  first-price auctions?

14                  A.        Yeah, first of all, I should  
15                  clarify that [REDACTED]

16

17

18

19

20

21                  [REDACTED] at  
22                  the time of the migration to unified  
23                  first-price auction.

24                  We made several changes to the  
25                  auction, right, and to, sort of like, how  
                  Google Ad Manager worked as a result of

1

2 that migration, including a change from a  
3 second-price auction to a first-price  
4 auction.

5

6 As part of those changes, we  
7 wanted to provide publishers more  
8 visibility into the full set of bids that  
9 they got, but we also had to balance that  
against some other constraints such as  
10 privacy and legal constraints.

11

12 Q. What -- well, let's start what  
13 legal constraints?

14

15 MR. MAHR: I'll just caution the  
16 witness not to reveal in his answer  
any communications with counsel about  
legal advice.

17

18 THE WITNESS: Thank you, Eric.

19

20 A. I was just going to say that as  
I understood those constraints, like,  
21 those were all in conversation with our  
product counsel.

22

23 Q. Well, I guess can you -- I'm not  
interested in the conversation you had  
24 with your counsel. I'm interested in the  
changes that were made.

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A. So, the changes that were made

involved [REDACTED]

Q. How did publishers react to

changes to that [REDACTED] ?

A. I think a few publishers

expressed some concerns, but I think the

vast majority of publishers did not.

MR. McBRIDE: If we could pull

up GOOG-DOJ-29427368.

(The above mentioned exhibit was published.)

MR. McBRIDE: And if we could

skip to the first -- past the metadata sheet.

(Exhibit 152, email chain ending 9/11/2019, Bates GOOG-AT-MDL-29427358-374, was marked for identification, as

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1

2                   of this date.)

3 BY MR. McBRIDE:

4                   Q.        So, [REDACTED], this is an email  
5 from you sent September 11th, 2019, and  
6 you're sending it to [REDACTED] and the  
7 subject is: Re: Privacy Chat.

8                   Do you see that?

9                   A.        I do.

10                  Q.        Who's [REDACTED]?

11                  A.        I believe he was in our sales  
12 team, but I'm not actually sure what his  
13 role was.

14                  Q.        So, due to the nature of --  
15 of -- this is an email thread, so I think  
16 it may be -- it may be easiest for us to  
17 start at the bottom and work our way up.  
18 So if we could do that and jump to --  
19 apologies. Let me get this document -- so  
20 if we jump down to the page that ends in  
21 370, and there is in the lower half of the  
22 page where it says: On Wednesday  
23 September 11th, 2019 at 11:23 a.m. [REDACTED]  
24 [REDACTED] wrote.

25                   Do you see that?

Page 45

1

2 misleading and not necessarily a very  
3 careful choice by [REDACTED] while  
4 writing this email.

5 But as I understand the concern  
6 around user privacy was essentially  
7 revealing which particular users were  
8 associated with which bids from which  
9 advertisers because that could convey some  
10 information about the user which -- which  
11 might be sensitive in some fashion.

12 Q. Also in the parenthetical we  
13 see -- well, maybe I'll just read -- read  
14 the full sentence again: We had a call  
15 with [REDACTED] yesterday, where they

16

17

[REDACTED] - and then in parentheses -

18

19

I want to unpack that a little  
21 bit.

22

23

[REDACTED] that we were discussing  
24 a little bit earlier?

25

A. It is.

HIGHLY CONFIDENTIAL

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2

Q. And this reference to [REDACTED]

3

4

5

[REDACTED] what is that referring

6

7

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9

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20

A. [REDACTED]

21

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24

25

Q. [REDACTED]

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with the move to the unified first-price auction.

20 Q. You see then the last full  
21 sentence: [REDACTED] also made claims about us  
22 being anti-competitive with this change.

23 Do you see that?

24 A. I do.

25 Q. Do you know who is?

1

2 A. I believe that refers to [REDACTED]  
3 [REDACTED]. I'm not sure if [REDACTED] is her full  
4 name or, but she commonly goes by [REDACTED].  
5 She at the time used to work for [REDACTED].

6 Q. Other than -- well, with respect  
7 to your changes to the [REDACTED] are  
8 you aware of any other publishers who made  
9 claims about Google being anti-competitive  
10 with -- with the changes to the [REDACTED]

11 [REDACTED]

12 A. [REDACTED] is the most prominent  
13 one. I believe there were a couple of  
14 others, but I'm not sure who exactly they  
15 are.

16 Q. Can you remember any of their  
17 names?

18 A. I was just going to say I will  
19 also note that here I'm speaking in my  
20 personal capacity 'cause I don't -- I  
21 haven't seen this document. I wasn't  
22 prepared to discuss this particular  
23 document.

24 Sorry, go ahead.

25 Q. No, my question was just you're

Page 49

1

2 saying you didn't review this document in  
3 preparation for your deposition today?

4

A. That's right.

5

Q. Understood.

6

A. Right. And -- yeah, so, based  
7 on my personal recollection, I think [REDACTED]  
8 [REDACTED] may have been one of them, but  
9 I -- I'm not completely sure.

10

Q. Anybody else?

11

A. I'm sorry, I can't -- I can't  
12 even tell you with 50 percent confidence  
13 the name of any individual other  
14 publisher.

15

Q. Understood.

16

How about with respect to  
17 reserve price optimization, are you aware  
18 of any customers saying that the  
19 introduction of reserve price optimization  
20 was anticompetitive?

21

MR. MAHR: Objection to scope.

22

But you may answer.

23

A. I'm speaking in my personal  
24 capacity here.

25

I am not aware of any publishers

Page 50

1

2 who complained about the introduction of  
3 reserve price optimization.

4

5 Q. I'm sorry, you're not aware of  
6 any customers who complained about the  
7 introduction of reserve price optimization  
8 because it was anticompetitive or  
complained about it for any reason at all?

9

10 A. I'm not aware, I think I said  
11 I'm not aware of any publishers who  
12 complained about reserve price  
13 optimization, and I meant for any reason  
at all.

14

15 Q. How about for Dynamic Revenue  
Share?

16

MR. MAHR: Objection; scope.

17

18 A. Again here I'm speaking in my  
personal capacity.

19

20 I am not aware of any publishers  
21 who complained about it. But I will note  
22 that there was a control that publishers  
23 could use to decide whether they wanted to  
have it turned on or off and the vast  
24 majority -- there was -- there were some  
25 publishers who turned it off, but the vast

Page 51

1 majority of publishers kept it on.  
2

3 So I don't know that those  
4 publishers that turned it off had a  
5 specific complaint; I'm not aware of any  
6 complaints. But --

7 Q. Yeah.

8 A. -- overall, publishers seemed  
9 very happy with the feature.

10 Q. So I want to be clear.

11 For DRS, Dynamic Revenue Share,  
12 the ability of a publisher to turn that  
13 off only existed with respect to Dynamic  
14 Revenue Share version 2, correct?

15 A. For version 2 and subsequently.

16 Q. But for Dynamic Revenue Share  
17 version 1, publishers did not have the  
18 choice to turn Dynamic Revenue Share on or  
19 off, correct?

20 A. That is correct.

21 Q. If we can go up to the top of  
22 this -- of this email, the first page, and  
23 I want to zoom in on -- on these -- the  
24 two paragraphs here.

25 So, [REDACTED], this is -- this

Page 52

1  
2       is your response to the -- the emails in  
3       the thread below, and I'll start just by  
4       reading aloud this first paragraph: My  
5       answers to the questions are very similar  
6       to [REDACTED]'s: [Yes, no, no, marginally].  
7       I do think there's a risk they'll move off  
8       Ad Manager, but I actually believe that  
9       [REDACTED] has been signaling this for some  
10      time. All the times she's been saying  
11      "It's unfair that AdX doesn't work with  
12      other ad servers in the same way it works  
13      with DFP/It's unfair that AdX doesn't  
14      contribute demand to prebid" have actually  
15      been the reverse of the usual complaint  
16      (which has been largely addressed since  
17      Exchange Bidding). This new complaint  
18      doesn't make sense unless you want to use  
19      a different ad server.

20                   Do you see that?

21                   A.       I do.

22                   Q.       So, when you say that "[REDACTED] has  
23      been signaling this for some time" --

24                   A.       I'm sorry. Would it be possible  
25      for me to see the questions that are being

Page 128

1

2 just a five minute break?

3

MR. MAHR: Good for us.

4

I'm sure good for Marie.

5

THE STENOGRAPHER: Yes, thank  
6 you.

7

MR. MAHR: So let's go off the  
8 record.

9

THE VIDEOGRAPHER: The time  
10 right now is 11:51 a.m.

11

We are off the record.

12

(Recess taken.)

13

THE VIDEOGRAPHER: The time  
14 right now is 12:01 p.m.

15

We are back on the record.

16

BY MR. McBRIDE:

17

Q. Welcome back, [REDACTED] [REDACTED].

18

Turning back to our Exhibit 151.

19

(The above mentioned exhibit was  
20 published.)

21

BY MR. McBRIDE:

22

Q. If we jump to the -- let me just  
23 stay on this for one second.

24

So, some examples you gave me of  
25 filtering bid responses include if -- if

1

2 the bid is below the floor, that would be  
3 a reason why a bid response would be  
4 filtered. Is that correct?

5

A. That's correct.

6

7 And I think the other example I  
8 gave was it didn't match the protections  
9 that the publisher set up.

10

Q. Any other reasons a bid response  
11 would be filtered, that you can think of?

12

A. I think I also gave you the  
13 example of the ad was not the right format  
14 or the right size publisher requested.

15

Another one is we filter out ads  
16 that might be malware or otherwise harmful.  
17 We have a number of protections like that  
18 we apply.

19

Q. Would -- I know that Google runs  
a number of experiments.

20

Are there, to your knowledge, or  
21 have there been experiments running in [REDACTED]  
22 [REDACTED] that may have been -- may have  
23 resulted in bids being filtered out?

24

A. If you mean an experiment

25

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], I am not

Page 130

1

2 aware of any such experiment. But, you  
3 know, generally speaking, we run [REDACTED]  
4 [REDACTED] experiments in a year. It's  
5 possible there may have been one, but I am  
6 not aware of any such experiment.

7

8 Q. I guess, and I think that's a  
9 helpful clarification for my question. So  
let me try it again.

10

11 Are you aware of any experiments

12 that would have been running that as a

13

14

15 A. I can think of not a specific  
16 example, but the fact that that might have  
17 occurred is plausible.

18

19 For example, let's say we were  
20 to rule out, you know, an improvement to  
21 our malare detection that way. That might  
22 have started out as an experiment. In the  
23 course of a experiment we might have  
24 filtered out some malare that we newly  
identified that we hadn't identified  
25 before. So the effect of that experiment

1

2       might be to result in something's being  
3       filtered out.

4           Q.       Any other examples you can think  
5       of that might result, experiments that  
6       might result in ads being filtered out?

7           A.       I mean, again I don't have any  
8       specific example in my mind. I'm just,  
9       sort of, speculating on the kinds of  
10      things that could have occurred.

11               I think we spoke about privacy  
12      and consent, right. There were times  
13      where, you know, we probably ran  
14      experiments before ruling out some of the  
15      new consent requirements. As those  
16      experiments ruled out, there might have  
17      been cases where a buyer was not -- did  
18      not have the proper consent, meaning the  
19      user didn't consent to that buyer of  
20      having information or participating in  
21      some way. And so, you know, in the course  
22      of the experiment, we realized that that  
23      should change, okay.

24               But again, I'm not aware of any  
25      specific experiment that we did related to

Page 171

1

2 A. I do.

3 Q. And then there's a paragraph on  
4 the following page.

5 And I'll wait for Jim to catch  
6 up.

7 (Pause.)

8 So, it says the experiments  
9 team -- at the very top it says: The  
10 Experiment team develops the  
11 infrastructure and tools that allow  
12 Display Ads engineers to run experiments  
13 on fractions of live Ad requests, helping  
14 them to select and launch the best  
15 improvements to achieve their  
16 quarter-over-quarter RPM goals. The  
17 Experiments team also provides the  
18 experimenters with mechanisms to gradually  
19 ramp up/down a feature and red-buttons for  
20 controlling the flow of traffic through  
21 the Display Ads stacks.

22 Do you see that?

23 A. I do.

24 Q. Are you familiar with the  
25 Experiments team?

Page 172

1

2 A. I -- I knew they existed. I've  
3 spoken to some people on that team at some  
4 point. Didn't work very closely with  
5 them, but we used their infrastructure.

6

7 Q. How did you use their

infrastructure?

8

9 A. So, for example, if we wanted to  
10 run experiments on Google Ad Manager, we  
11 would use the infrastructure that they  
wrote.

12

13 Q. And did you run experiments on

Google Ad Manager?

14

15 A. We did.

16

17 Q. Do you have a rough sense of how  
18 many?

19

20 A. This -- this document below

21

22

23

24

25

Q. Let me try to unpack that a

Page 173

1  
2 little bit.

3 When you say [REDACTED]  
4 [REDACTED] were running on  
5 Google Ad Manager, do you have a sense of  
6 how much -- they were running on live  
7 traffic in Google Ad Manager. Is that  
8 right?

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24 Q. As a general matter, when --  
25 when -- in your work on the sellside, when

Page 174

1

2 you were making changes and rolling out  
3 new features for -- for anything you  
4 were -- you were designing and  
5 implementing, you would run experiments,  
6 correct?

7

A. I will say [REDACTED]

8

9

10 Q. Now, some of the key stats that  
11 are -- are listed here, I think it says  
12 key stats as of August 2019, the first

13

14

15

16

17

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19

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25

And I think -- I guess, so,  
first of all, do you have any reason to  
doubt that as of August 2019 there were,

MR. MAHR: Objection; form and  
scope.

You can answer.

A. I have no reason to doubt it,

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THE STENOGRAPHER: I'm sorry, I  
can't hear that last answer, that last  
sentence.

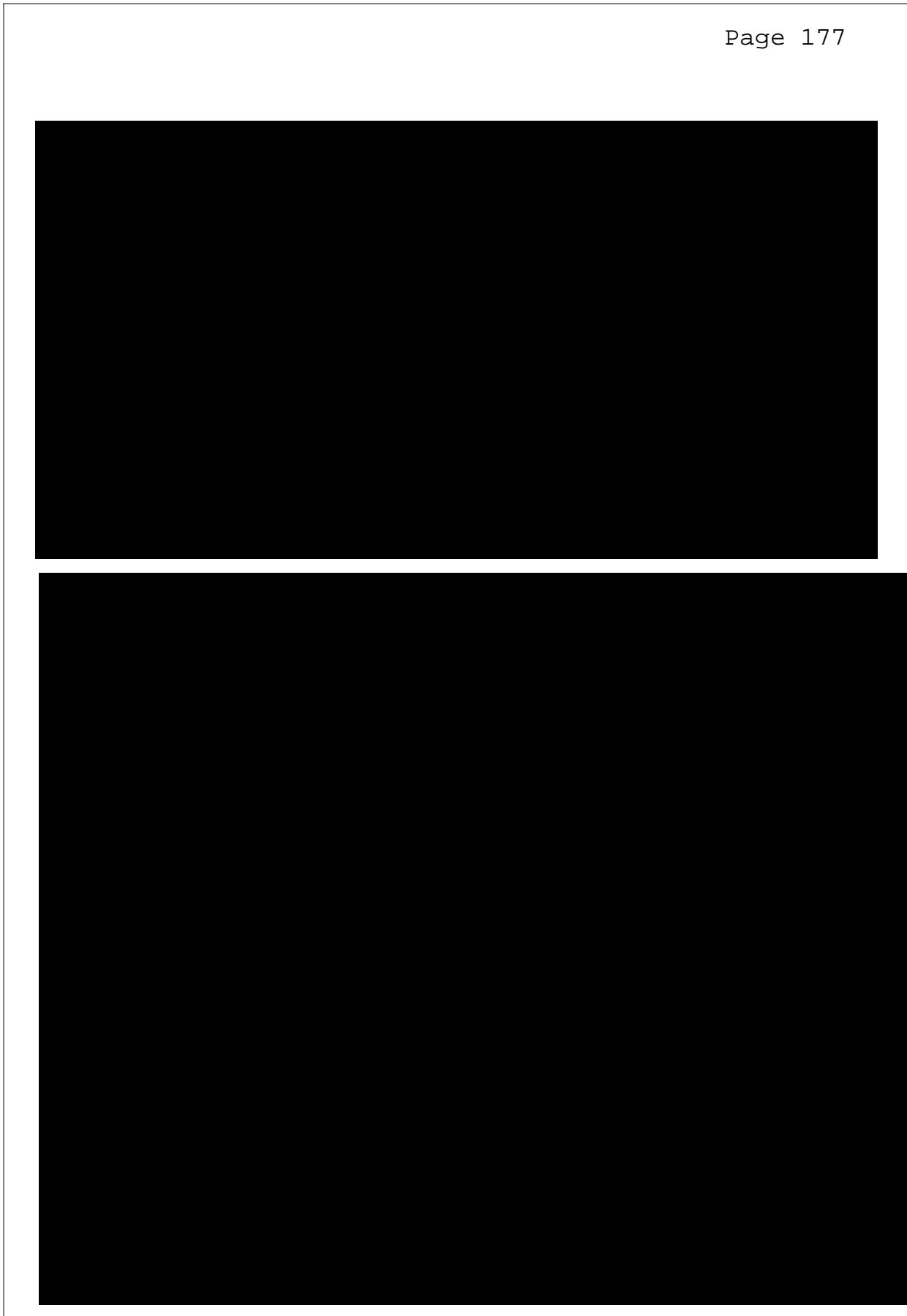
A. I think I said I will note that

Q. And you say, I think you -- you

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Do you see that?

8

A. I do.

9

10

Q. So is that saying that on

average for a given query that you'll --

11

12

13

14

MR. MAHR: Objection to form;

scope.

15

You can answer.

16

17

A. That seems to be what it's

saying, yes.

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Q. And do you have any reason to --

to doubt that that's correct?

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A. I have no reason to doubt that.

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Q. If you ran an experiment and the

result of the experiment impacted a

publisher's revenue or an advertiser's

bid, did Google keep track of that and

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2 reimburse the publisher or -- or  
3 advertiser for the consequence of the  
4 experiment?

5 A. Generally speaking, I can't  
6 speak to practices for advertisers where I  
7 didn't conduct experiments on advertisers.  
8 That would be more done by buyside  
9 products.

10 THE STENOGRAPHER: I'm sorry, I  
11 couldn't hear.

12 "I can't speak to practices for  
13 advertisers where..."

14 A. I didn't work on buyside  
15 products.

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2 C E R T I F I C A T E

3 I, MARIE FOLEY, Registered Merit  
4 Reporter, Certified Realtime Reporter, and  
5 Notary Public for the State of New York,  
6 do hereby certify that prior to the  
7 commencement of the examination, [REDACTED]  
8 [REDACTED], was duly remotely sworn by me to  
9 testify to the truth, the whole truth and  
10 nothing but the truth.

11 I DO FURTHER CERTIFY that the foregoing  
12 is a verbatim transcript of the testimony  
13 as taken stenographically by me at the time,  
14 place and on the date hereinbefore set forth,  
15 to the best of my ability.

16 I DO FURTHER CERTIFY that I am neither  
17 a relative nor employee nor attorney nor  
18 counsel of any of the parties to this action,  
19 and that I am neither a relative nor employee  
20 of such attorney or counsel, and that I am  
21 [REDACTED] in the action.

22 *Mari Foley, RMR, CRR*

23 COURT REPORTER  
24 Registered Merit Reporter  
Certified Realtime Reporter  
Notary Public  
25 Dated: April 22, 2024